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July 13, 2000

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Licensing Areas For 24 GHz Licenses**
Ex Parte in WT Docket 99-327

Dear Ms. Salas:

Personal
Communications
Industry
Association

PCIA writes to urge the Commission to reject the exclusive use of Economic Areas (EAs) for its pending 24 GHz licensing area rules. The Commission should instead adopt Basic Trading Areas (BTAs) or the Commerce Department's 348 Component Economic Areas (CEAs). These CEAs are the functional equivalent of BTAs, which the Commission has repeatedly found to be optimal for fixed wireless licensing areas but wishes to now avoid due to copyright concerns. At a minimum, the Commission should adopt a mix of EA and CEA license blocks to allow both incumbent operators and broadband entrepreneurs access to optimally sized geographic areas.

PCIA believes that even a cursory review of the results of Auction #30 for 39 GHz licenses should give the Commission significant reason to rethink the exclusive use of Economic Areas. There, only 35 companies qualified for an auction using EAs. Only 29 companies purchased the 2,173 licenses (an average of 75 licenses per company). In reality, though, the actual results indicate an even more disturbing skewing of holdings. Only three companies--all incumbent operators--purchased 1,460 of the 2,173 licenses (67 percent). Incumbents also purchased the overwhelming majority of the remaining licenses. Of the Top 30 market highest bids, 29 were made by incumbent carriers. PCIA believes that this extremely concentrated bidding result is due, at least in part, to the large size of the licensing areas. This large size favors incumbents who can leverage their operations in core or adjacent licensing areas to purchase an Economic Area.

The Commission Has Repeatedly Found BTAs Appropriate For Fixed Wireless

The Commission has repeatedly found that BTA service areas are the appropriate size for fixed wireless operations. For LMDS, the Commission found almost three times smaller than EAs, that BTAs "serve as a logical geographic area for licensing LMDS because they represent the natural flow of commerce, comprising areas within which customers have a community of interest."¹ The Commission concluded that BTAs were large enough to provide economies of scale so that typical providers would not need to combine BTAs in order to serve the marketplace in a timely and effective manner. The Commission also explained that the BTA was the appropriate size for offering combined one-way and two-way voice and data packages in competition with ILECs and cable operators "because BTAs closely approximate areas where consumers have a community of interest." The Commission recognized that BTAs were appropriately sized for fixed wireless networks that must build out from a central urban center. As the Commission explained, "BTAs represent

¹ Establishment of Rules For Local Multipoint Distribution Service And Fixed Satellite Services, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545, ¶136(1997) ("LMDS Order").

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reasonable building blocks for establishing an LMDS system for both those seeking to offer regional coverage or those with limited business plans.”²

For 39 GHz, the Commission initially determined that BTAs meet the obligation to create licensing areas that provide for a wide variety of applicants.³ The Commission found that BTAs represent the natural flow of commerce, comprising areas within which consumers have a community of interest. The Commission also found that BTAs provide economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by minorities and women. The Commission also found that BTAs would promote investment and the rapid deployment of new technologies and services.⁴ Then, the Commission rejected BTAs for 39 GHz licenses because copyright concerns could cause “extended delays” in the licensing process.⁵

In rejecting calls for service areas larger than BTAs in previous fixed wireless proceedings, the Commission correctly explained that entities could aggregate licenses, through the auction or post-auction process, if they wished to provide fixed service over wider service areas.⁶ The Commission cannot, however, conclude that entities wishing to serve only BTAs must purchase larger service areas than necessary and then hope to disaggregate or partition the license at a later date. Possible partitioning of unwanted service areas does not meet Congress’ requirements for providing “economic opportunity” or the equitable distribution of licenses through auctions.⁷ Requiring the purchase of service areas previously deemed larger than optimal by the Commission will merely burden small entities and start-up companies with unnecessarily large upfront payments, minimum bids, down payments and debt service. This makes it less likely that these entities will be capable of purchasing licenses at auction; for licenses that might be won by these entities, it is less likely that they will be able to serve sparsely-populated portions of an EA license area due to debt service obligations—and the Commissions’ “substantial service” requirements.

An Economic Area is almost three times as large as a Basic Trading Area. This size not only favors larger, better-financed entities in the auction process, but also makes it extremely difficult for a smaller entity to finance a business plan that requires service over such a large area. The Commission’s proposal favors incumbent 24 GHz operators and other well-financed entities. Under the Commission’s scenario, smaller entities either must take the risk of buying large EAs and then hope to disaggregate or partition them, or hope to purchase spectrum from larger auction winners through these mechanisms.

The Commission Can Use CEAs Without Incurring Copyright Liability

The Commission should select a service area that is similar in size to BTAs, but not covered by a Rand McNally copyright. For example, the Commerce Department’s Bureau of Economic Analysis (BEA), creator of Economic Areas, also has defined 348 Component Economic Areas that are used as the building blocks of the larger EAs. As described by the BEA, “each CEA consists of a single economic node [defined as a metropolitan area or similar areas that serve as centers of economic activity] and the surrounding counties that are economically related to the node.” Ninety (90) percent of nodes are metropolitan and ten (10)

² LMDS Order at ¶¶136-139.

³ 47 U.S.C. §309 (J)(4)(c).

⁴ Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40 GHz Bands, Report and Order and Second Notice of Proposed Rulemaking, 12 FCC Rcd 18600, ¶¶13-15 (1997) (“39 GHz GHz Report”).

⁵ 24 GHz Notice at note 27 citing Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40 GHz Bands, Memorandum Opinion and Order in ET Docket 95-183 (rel. July 26, 1999) at ¶46.

⁶ 39 GHz Report at ¶15; 24 GHz Notice at ¶9.

⁷ 24 GHz Notice at ¶16.

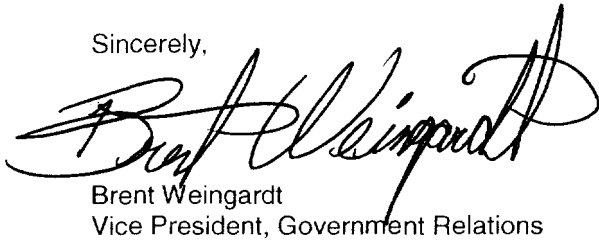
percent non-metropolitan. Each metropolitan area (e.g., an MSA or PMSA) is the node of a different CEA. The non-metropolitan nodes are non-metropolitan counties whose newspapers are widely read in those areas where they are published.⁸

CEAs, while still larger than optimally sized BTAs, are approximately half the size of EAs and provide both the economies of scale and community of interests historically sought by the Commission. PCIA urges the Commission to adopt either the BTA or CEA service area for 24 GHz licenses. These service areas are consistent with the Commission's previous decisions as to the appropriate geographic size for fixed wireless licenses and provide small entities and entrepreneurs a reasonable opportunity to bid upon and build out these networks.

The Commission Can Adopt Both EAs and CEAs

In the alternative, the Commission should license at least three (3) of the 40 MHz spectrum pairs using CEAs with the remainder at the EA or equivalent size. This will allow entrepreneurs to gain a foothold at 24 GHz while still preserving two (2) EA blocks for incumbents while also permitting them to purchase CEA licenses. Under this proposal, new providers would have reasonable access to 240 MHz of spectrum in CEA licensing areas while any bidder could conceivably aggregate up to 400 MHz of spectrum in a large geographic area consistent with their business plans.

Sincerely,



Brent Weingardt
Vice President, Government Relations

cc: Chairman William E. Kennard
Commissioner Ness
Commissioner Powell
Commissioner Furchtgott-Roth
Commissioner Tristani
Tom Sugrue
Kathleen O'Brien Ham
Howard Davenport
D'wana Terry

⁸ Notice of Final Changes, Final Redefinition of the BEA Economic Areas, 60 F.R. 13114 (March 10, 1995).